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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**AMANDA HILL; and GALE
HYDE, Individually and On Behalf
of All Others Similarly Situated,**

Plaintiffs,

v.

QUICKEN LOANS INC.,

Defendant.

Case No.: 5:19-cv-00163-FMO-SP

CLASS ACTION

**PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT'S
EX PARTE APPLICATION FOR
LEAVE TO FILE A RESPONSE
TO PLAINTIFF'S EVIDENTIARY
OBJECTIONS**

1 Plaintiffs Amanda Hill and Gayle Hyde, individually and on behalf of all
2 others similarly situated, submit this response in opposition to *Ex Parte* Application
3 for Leave to File Response to Plaintiff's Evidentiary Objections (ECF No. 50 (the
4 "*Ex Parte* Application")) filed by Defendant Quicken Loans, Inc. ("Defendant").
5 Defendant's *Ex Parte* Application should be denied as procedurally improper and
6 premature, and substantively unfounded and futile.

7 Unlike regularly noticed motions, applications for ex parte relief are
8 "inherently unfair" and "pose a threat to the administration of justice" because "the
9 parties' opportunities to prepare are grossly unbalanced." *Mission Power Eng'g Co.*
10 *v. Cont'l Cas. Co.*, 883 F. Supp. 488, 490 (C.D. Cal. 1995). The opposing party "can
11 rarely make its best presentation" on the short notice accompanying an ex parte
12 application. *Id.* at 491.

13 The *Ex Parte Application* should be denied as procedurally improper because
14 it was filed without the good faith meet-and-confer required by Local Rule 7-19.1,
15 and in avoidance of the notice required by Local Rule 7-3. Defendant's pre-motion
16 call with Plaintiffs' counsel was at best perfunctory, not in good faith; Defendant's
17 attorneys refused to discuss the substance of the contemplated filing or potential
18 resolution. Instead, Defendant's attorneys flatly asserted that if Plaintiffs would not
19 agree immediately, Defendant would simply apply *ex parte*. Nevertheless, Plaintiffs
20 did not oppose outright. Rather, Plaintiffs offered to consider the request, review the
21 objections and other current submissions, and respond to Defendant within the
22 period provided by Local Rule 7-3. Defendant rejected Plaintiffs' good faith
23 proposal and has now jumped the gun, filing this premature *Ex Parte* Application.¹

24 Defendant's *Ex Parte* Application should also be denied as substantively
25 unfounded and futile. It is unfounded because Plaintiff Amanda Hill's evidentiary

26 ¹ According to the Court's Initial Standing Order Section V, "The court entertains
27 ex parte applications only in extraordinary circumstances; sanctions may be imposed
28 for misuse of the ex parte process."

1 objections were filed in compliance with Federal Rule of Civil Procedure 56(c),
2 which governs objections to evidentiary submissions in connection with motions to
3 compel arbitration. *See, e.g., Alvarez v. T-Mobile USA, Inc.*, 2011 WL 6702424, at
4 *3 (E.D. Cal. 2004) (explaining that objections pursuant to Rule 56(c) are proper in
5 response to evidentiary submissions in connection with motions to compel
6 arbitration); *see also, In re Uber Text Messaging*, Order Denying Motion to Compel
7 Arbitration, Case No. 18CV2931, ECF No. 108 at 5-6, 8-9, 12-16 (N.D. Cal. June
8 18, 2018) (denying motion to compel arbitration on basis of plaintiff's evidentiary
9 objections to declarations and other "new evidence" that defendant Uber improperly
10 submitted in support of its reply) (attached as **Exhibit A**).

11 It is futile because Plaintiffs' objections are sound and, in any event,
12 Defendant has failed to carry its burden to prove that an agreement to arbitrate was
13 formed. As the Honorable Haywood S. Gilliam, Jr. recently explained on a nearly
14 identical procedural and evidentiary posture:

15
16 Snippets from a database, reproduced without any context, explanation,
17 or supporting testimony, are not properly authenticated evidence. However, . . . even if [Defendant] had authenticated these documents,
18 they would not dispel the genuine issue of material fact [regarding
19 contract formation] . . . [Defendant] says [Plaintiff] signed up for its
20 services and thereby agreed to arbitrate his claims. [Plaintiff] said he
21 did not. The Court cannot resolve this dispute on a motion to compel .
22 . . [Defendant] provided what it says are snippets from its user database
23 and asked the Court (and Plaintiffs) to accept its conclusion as to what
24 this data signifies. . . [But] [t]here are a number of other potential
25 explanations for how [Defendant] came to possess [Plaintiff's]
26 information: [Plaintiff] may have partially complete the sign-up process
27 . . . [Defendant] may have collected his information from a third party,
28 or [Defendant's] database may contain errors . . . At bottom,
[Defendant] says its documents confirm that [Plaintiff] completed the
registration process, while [Plaintiff] avers that he did not. This
genuine issue of fact over whether an agreement to arbitrate was formed
required the Court to **DENY** the motion to compel arbitration.

See Ex. A at pp. 10, 13, 15-16.

1 For the foregoing reasons, Defendant's *Ex Parte* Application should be
2 denied.

3
4 Dated: June 18, 2019

Respectfully submitted,

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